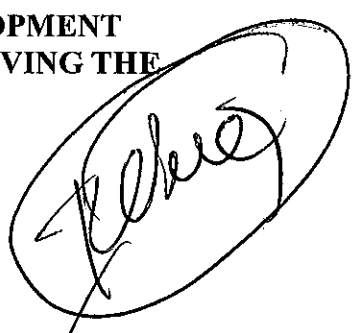


# COMMUNITY REDEVELOPMENT AGENCY AGENDA REPORT

**SUBJECT: A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO, CALIFORNIA, APPROVING THE SALE OF AGENCY PROPERTY TO MINERVA KELADA.**

**AGENDA DATE:** October 7, 2008

**PREPARED BY:** Rosalind Guerrero   
Jennifer M. Lyon, City Attorney

**RECOMMENDATION:** Hold public hearing and allow public input. Approve resolution authorizing the transfer of land to Minerva Kelada and allowing the Executive Director to execute the agreement and take all actions necessary to execute the land transfer. 

**ENVIRONMENTAL REVIEW:** This land transfer agreement proposes no new development at this time. It is merely a transfer of land to continue the existing uses. When Dr. Kelada proposes any new development or redevelopment of the site, she will have to proceed through the appropriate development review process, which includes environmental review.

**BACKGROUND INFORMATION: (Prior action/information)** The Redevelopment Agency owns the property at 450 Birch Avenue (APNs 058-281-002 and 058-281-003) (old hospital property). The Agency has leased a portion of the property to Dr. Minerva Kelada for approximately eight (8) years. The City/Agency has leased another portion of the parcel to the Heffernan Memorial Hospital District for a number of years. In early 2008, the Agency Board expressed an interest in splitting the parcel to sell a portion to Dr. Kelada. That matter came before the Planning Commission in June of 2008, but that land sale was never executed.

Instead, the Agency Board has now decided to sell the entire parcel as one parcel. Dr. Kelada, the Heffernan District and Warren Owens all submitted proposals to purchase the property. Dr. Kelada was the highest bidder, and the Agency Board gave direction to sell the whole property to Dr. Kelada at the appraised value to continue the existing uses on the property. Therefore, Staff is merely carrying out the Agency Board's direction to take the proper steps to execute a land transfer agreement.

Under Government Code section 65402, prior to the City or Agency selling or acquiring any land, the "location, purpose and extent" of a land acquisition must be reported to the Planning Commission, and the Planning Commission must issue a resolution as to the conformity of the proposed disposition with the General Plan. The Planning Commission approved such resolution on September 22, 2008.

**DISCUSSION (Current consideration):** Dr. Minerva Kelada intends to continue the use of the property as a medical office. The existing zoning for this parcel is R1, residential single family. The existing medical office uses are therefore legal non-conforming uses. As long as the present uses continue, the property will remain a legal non-conforming use unless Dr. Kelada proposes a change or it loses the non-conforming use status in some other fashion. If it ever loses its legal non-conforming use status, Dr. Kelada or the then present owner would have to apply for a zone change. The mere execution of the land transfer agreement to transfer the property to a new owner will not change the zone.

The land transfer agreement attached hereto provides for the purchase price of \$1,055,000.00. The purchase price is at or above the appraised value determined by an appraiser hired by the Agency. The Agreement provides for a \$50,000 non-refundable deposit that will be immediately released to the Agency and will be credited towards the purchase price. The Agreement contains the requirements under redevelopment law (Health and Safety Code §§ 33430 *et. seq.*) pertaining to the non-discriminatory use of the land and future redevelopment of the land. Dr. Kelada is required to maintain the use as a medical facility for at least ten (10) years and is required to redevelop the site within twenty (20) years, or sooner. When Dr. Kelada seeks to redevelop the land, she will have to go through the normal planning and development process and obtain the necessary approvals.

The City/Agency has leased a portion of this land to the Heffernan Memorial Hospital District for several years. The Agency's lease with Heffernan expired in April of 2008 and the District is currently in a holdover, month-to-month status. Dr. Kelada has acknowledged this and has not requested that the District's status be terminated prior to close of escrow. Therefore, the holdover tenant will be a condition that Dr. Kelada accepts as part of this transaction.

The Health and Safety Code allows the Agency to dispose of land without a public bidding process as long as the sale is considered at a public hearing which has been advertised for two weeks prior to the hearing. This public hearing was properly advertised. The resolution attached hereto allows the Executive Director of the Agency to execute the land transfer agreement and any other necessary documents to accomplish this land transfer. Staff recommends that the Agency Board hold the public hearing, accept public comment, and approve the attached resolution, if appropriate.

**Attachments:**

- 1. Proposed Resolution to Authorize the Land Transfer**
- 2. Land Transfer Agreement (with exhibits)**

**Agenda Item No. \_\_\_\_**  
**Page \_\_\_\_ Of \_\_\_\_**

**AGREEMENT OF PURCHASE AND SALE**  
**AND JOINT ESCROW INSTRUCTIONS**

TO: CHICAGO TITLE INSURANCE COMPANY      Escrow No.  
1196 Main St.  
El Centro, Ca. 92243  
Telephone: 760-352-2011      Escrow Officer:

THIS AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS ("Agreement"), entered into this \_\_\_\_\_ day of October, 2008, constitutes an agreement by which the Community Redevelopment Agency of the City of Calexico, a California Corporation (referred to as "Seller"), agrees to sell, and Minerva Kelada, an individual ("Buyer"), agrees to purchase certain real property and improvements thereon located at 450 Birch Avenue, (APNs 058-281-002 and 058-281-003) in the City of Calexico ("City"), County of Imperial ("County"), State of California, as set forth in Exhibit "A," attached hereto and incorporated herein by this reference (the real property and improvements are collectively referred to herein as the "Property"). This Agreement also constitutes joint escrow instructions of Buyer and Seller to Chicago Title Insurance Company, 1196 Main St., El Centro, California 92243 ("Escrow Holder") for its Escrow No. \_\_\_\_\_.

NOW, THEREFORE, Buyer and Seller agree, and Escrow Holder is instructed as follows:

1. Purchase and Sale. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property upon the terms and conditions set forth below.

2. Purchase Price. The purchase price for the Property ("Purchase Price") shall be One Million Fifty Five Thousand Dollars (\$1,055,000.00).

3. Payments of Purchase Price. The Purchase Price shall be payable by Buyer as follows:

3.1 Deposit. Buyer has already opened an escrow account with a deposit of Fifty Thousand Dollars (\$50,000) ("Deposit"). Within seven (7) business days of Opening of Escrow for this land transfer, Buyer will transfer the Deposit into the Escrow account opened for this specific land transfer. The Deposit funds shall be credited against the Purchase Price at the Close of Escrow and shall be immediately released to Seller. The Deposit shall be nonrefundable to Buyer.

3.2 Balance of Purchase Price. The balance of the Purchase Price, and Buyer's share of closing costs and prorations shall be deposited into Escrow by Buyer in cash, wire transfer, certified or cashier's check or other immediately available funds on or before the Close of Escrow. Within ten (10) days of Opening of Escrow, Buyer shall provide proof to Seller that Buyer can or has obtained the appropriate financing to pay the complete Purchase

Price.

4. Opening of Escrow. Upon execution of this Agreement, Escrow ("Escrow") will be opened within ten (10) business days at Escrow Holder for the consummation of the transactions contemplated hereby. The "Opening of Escrow" shall be the date that this Agreement, signed by all parties hereto, is deposited with Escrow Holder. Escrow Holder shall notify Buyer and Seller in writing as to the date of the Opening of Escrow.

5. Time for Close of Escrow.

5.1 Closing. Escrow shall close forty-five (45) days after opening of Escrow. As used in this Agreement, "Close of Escrow" shall mean the date on which Seller's grant deed conveying title to the Property to Buyer is recorded in the Official Records of Imperial County.

5.2 Amendment/Extensions. If the Escrow is not closed in accordance with the time prescribed in Section 5.1 above, the Close of Escrow may be extended by mutual agreement of the parties. Any amendment or extension of this Agreement must be in writing and signed by all parties. The Executive Director is authorized to agree and execute any such extensions or amendments to this Agreement on behalf of Seller.

6. Right of Entry. Buyer is currently in possession and leasing a portion of the Property. During Escrow, Buyer shall have the right, at Buyer's expense, unless otherwise agreed, to conduct any and all inspections, investigations, tests, surveys, and other studies ("Buyer Investigations") Buyer may deem appropriate in connection with the transaction contemplated herein. There is currently another tenant, Heffernan Memorial Hospital District, leasing another portion of the Property. Buyer must obtain permission from Heffernan to make entry onto the portion of the Property that Heffernan currently leases. Buyer shall keep the Property free and clear of liens resulting from Buyer Investigations and indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs arising out of physical damage or personal injury caused by Buyer Investigations.

7. Conduct of Escrow

7.1 Grant Deed. On or before Close of Escrow, Seller shall deposit with Escrow Holder Seller's grant deed ("Grant Deed") to the Property in substantially the form as set forth on Exhibit "C" attached hereto and incorporated herein by this reference.

7.2 Prorations. Escrow Holder shall prorate real property taxes and assessments, if any, in Escrow as of Close of Escrow on the basis of a 30-day month, based upon the latest available tax bills. Personal property taxes, if any, assessed against the Property shall be paid in full by Seller through Escrow.

7.3 Supplemental Taxes. With respect to any supplemental taxes assessed against the Property pursuant to California Revenue and Taxation Code Section 75, et seq., Buyer and Seller hereby agree between themselves that Seller shall be obligated to pay all such

supplemental taxes assessed against the Property for any period prior to Close of Escrow (and Seller shall pay any such amount to Buyer outside of escrow after the Close of Escrow), and Buyer shall be obligated to pay all such supplemental taxes assessed against the Property for any period from and after Close of Escrow.

7.4 Costs and Fees. Buyer shall pay (a) the premium cost attributable to the ALTA portion of the Title Policy, as set forth below, (b) recording costs and fees for the Grant Deed, and (c) one-half (1/2) of Escrow Holder's fees. Seller shall pay (a) the premium cost of the CLTA portion of the Title Policy, plus the cost of any endorsements thereto required to cure disapproved exceptions, (b) all County and City transfer taxes and fees, if any, and (c) one-half (1/2) of Escrow Holder's fees. All other costs and fees related to the transaction contemplated herein shall be paid by the parties in the manner consistent with common practice in commercial transactions in the County.

7.5 Default by Seller. In the event Seller shall default under any of the terms and provisions of this Agreement, Buyer shall have the right, but not the obligation, in addition to any other rights or remedies which it may have at law or in equity, to terminate Buyer's obligations under this Agreement and the Escrow created hereby. In the event of such termination by Buyer: (i) Buyer shall be entitled to receive all funds and documents previously deposited by it into Escrow including all sums paid under this Agreement except the Deposit listed under Section 3.1; (ii) Escrow Holder shall and is hereby authorized and directed to promptly return to Buyer said funds and any documents deposited by Buyer within three (3) business days except the Deposit listed under Section 3.1; and (iii) Seller shall bear all costs and expenses of Escrow and other related expenses.

7.6 Default by Buyer. Buyer and Seller hereby agree that if Escrow fails to close by reason of the default of Buyer hereunder, including but not limited to, failing to submit the deposit to escrow, failing to deposit necessary funds to close escrow, or failing to submit the balance of funds for the purchase price, this Agreement and the rights and obligations of Seller hereunder and the Escrow created hereby shall terminate upon written demand of Seller. In the event of Buyer's default, Buyer's obligations and Seller's remedies shall be governed exclusively by Section 10 below. Buyer shall bear all costs and expenses of Escrow and other related expenses.

7.7 Further Actions. Seller and Buyer shall, during Escrow, execute all documents and perform all acts consistent with this Agreement reasonably necessary or appropriate to consummate the purchase and sale contemplated by this Agreement, including the requirement to sign supplemental escrow instructions.

7.8 Insurance. Insurance policies for fire or casualty are not to be transferred, and Seller will cancel its own policies after the Closing.

7.9 Preliminary Title Report. Promptly after the Opening of Escrow, Seller, at its expense, shall furnish Buyer with a Preliminary Title Report on the Property issued by Chicago Title Insurance Company (the "Title Company"). The Preliminary Title Report shall be accompanied by legible copies of all underlying documents for all exceptions ("Exceptions") set

forth in the Preliminary Title Report. Buyer shall have ten (10) days from receipt of the respective Preliminary Title Report within which to give written notice to Seller of Buyer's approval or disapproval of any of such Exceptions. Buyer's failure to give written disapproval of the Preliminary Title Report within such time limit shall be deemed approval of the Preliminary Title Report. No deeds of trust, mortgages or other liens, except for the lien of property taxes and assessments not yet due, shall be approved Exceptions. If Buyer notifies Seller of its disapproval of any Exceptions in the Preliminary Title Report, or is deemed to have disapproved the Preliminary Title Report, Seller shall have the right, but not the obligation, to remove any disapproved Exceptions within thirty (30) days after receiving written notice of Buyer's disapproval or provide assurances satisfactory to Buyer that such Exception(s) will be removed on or before the Closing. If Seller cannot or does not elect to remove any of the disapproved Exceptions within that period, the Buyer shall have ten (10) days after the expiration of such thirty (30) day period to either give Seller written notice that Buyer elects to proceed with the property exchange subject to the disapproved Exceptions or to give the Seller written notice that the reviewing party elects to terminate this Agreement. Seller's failure to remove any disapproved exceptions shall not be considered a default under this Agreement. Seller shall not voluntarily create any new exceptions to title following the date of this Agreement. Buyer acknowledges and accepts that Seller has an existing holdover tenant, Heffernan Memorial Hospital District ("Heffernan"), on a portion of the Property to be conveyed to Buyer. Buyer accepts the fact that Heffernan currently leases a portion of the Property and Buyer will become the landlord of Heffernan upon Close of Escrow. Seller has no obligation to terminate the holdover status with Heffernan prior to Close of Escrow. The fact that Heffernan is a holdover tenant on an expired lease shall be accepted by Buyer and shall not constitute an unapproved exception or default by Seller.

8. Conditions Precedent to Close of Escrow. The Close of Escrow shall be contingent upon the following, which shall be satisfied or waived by Buyer, if applicable pursuant to the terms below:

8.1 Material Destruction of the Property. The Property shall not have been materially and adversely affected to prevent its intended use between the date of this Agreement and the Close of Escrow.

8.2 Title Insurance. Seller's delivery to Buyer of a CLTA owner's policy of title insurance (the "Title Policy") issued by Chicago Title Insurance Company in the amount of the Purchase Price covering the Property. Seller shall cause all liens evidencing monetary encumbrances including, without limitation, deeds of trust, financing statements, and special assessments, but excluding non-delinquent real property taxes and excluding non-delinquent general assessments and special assessments to be removed as of the Close of Escrow. The pre-existing Heffernan lease and holdover status shall also remain through the Close of Escrow.

8.3 Seller's Compliance. Seller shall comply with all of its obligations hereunder including, but not limited, to the accuracy of its representations and warranties under Section 13 below.

8.4 Due Diligence Period. Seller agrees to provide the "Due Diligence Documentation" as set forth on Exhibit "B", attached hereto and incorporated herein by this reference. At Buyer's sole option, collection of Due Diligence Documentation during Escrow may be waived.

8.5 Termination of Leasehold. Buyer and Seller are currently parties to a Lease on the Property and improvements as evidenced in the documents recorded under 00-25665 and as amended in document 04-32571 ("Existing Kelada Lease"). The Existing Kelada Lease expires in 2015. Buyer agrees that prior to the Close of Escrow, Buyer and Seller shall execute a Surrender of Leasehold Interest Agreement, in the form attached hereto as Exhibit "E," thereby terminating the Existing Kelada Lease and all obligations Seller may have under that Agreement upon the close of escrow. The Surrender of Leasehold Interest Agreement will only take effect if escrow successfully closes. If escrow fails to close for any reason, then the Surrender of Leasehold Interest Agreement will be null and void and the Existing Kelada Lease shall govern the terms of the arrangement between Buyer and Seller.

The conditions described in this section are for the exclusive benefit of Buyer and may be waived in whole or in part by Buyer only (except the condition in Section 8.5), at its sole option by Buyer's delivery of written notice of such waiver to Seller and Escrow Holder. In the event the above conditions are not satisfied or waived by Buyer and through no fault of Seller, this Agreement and the Escrow opened pursuant hereto shall thereupon automatically and immediately terminate, and Buyer and Seller shall have no further liability to each other, except as otherwise expressly stated herein. In the event of a termination by reason of a failure of the above conditions, Section 7.5 shall not apply and Escrow Holder shall, without further instruction from Buyer or Seller, charge Escrow cancellation costs to Buyer within three (3) business days.

9. Disbursements and Other Actions by Escrow Holder. Upon the Close of Escrow and conditioned upon each party's performance of their respective obligations under this Agreement and the satisfaction or waiver of all conditions precedent set forth herein, Escrow Holder shall:

9.1 Disburse all funds deposited with Escrow Holder by Buyer in payment of the Purchase Price as follows:

(a) Deduct therefrom all items chargeable to the account of Seller pursuant to the terms hereof.

(b) If, as a result of the prorations pursuant to the terms and provisions of this Agreement, amounts are to be charged to the account of Seller, deduct therefrom the total amount of such charges.

(c) The remaining balance of the funds so deposited by Buyer shall be disbursed to Seller promptly upon the Close of Escrow by wire transfer or certified or cashier's check as instructed by Seller.

9.2 Cause the Grant Deed, the Surrender of Leasehold, and the Memorandum of Agreement to be recorded (with documentary transfer tax information to be affixed after recording) and any other documents which the parties hereto may mutually direct to be recorded with the recording officer of the County of Imperial, State of California.

9.3 Release to Seller and Buyer the escrow closing statements pursuant to the contact information as indicated in Section 12.

10. LIQUIDATED DAMAGES. SELLER AND BUYER AGREE THAT THE AMOUNT OF SELLER'S DAMAGES IN THE EVENT OF BUYER'S DEFAULT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX. THEREFORE, BUYER AND SELLER HEREBY AGREE THAT IF ESCROW FAILS TO CLOSE BY REASON OF A DEFAULT BY BUYER, THE AMOUNT OF THE DEPOSIT (\$50,000.00), AND ANY SUPPLEMENTS THERETO, TO THE EXTENT DEPOSITED WITH ESCROW HOLDER AND ALL ACCRUED INTEREST THEREON IS A REASONABLE ESTIMATE OF SELLER'S DAMAGES IN SUCH EVENT AND THAT SUCH SUM SHALL CONSTITUTE LIQUIDATED DAMAGES AND CONSTITUTE SELLER'S SOLE AND EXCLUSIVE REMEDY (PRECLUDING SELLER, WITHOUT LIMITATION, FROM SEEKING SPECIFIC PERFORMANCE OF THE AGREEMENT OR FROM RECOVERING OTHER DAMAGES) AGAINST BUYER.

IN THE EVENT ESCROW FAILS TO CLOSE DUE TO BUYER'S DEFAULT, THEN UPON THE WRITTEN DEMAND OF SELLER (A) ESCROW HOLDER SHALL, AND IS HEREBY AUTHORIZED AND INSTRUCTED TO, PROMPTLY RETURN TO BUYER AND SELLER ALL DOCUMENTS AND INSTRUMENTS TO THE PARTIES WHO DEPOSITED SAME, (B) ALL TITLE AND ESCROW CANCELLATION CHARGES SHALL BE CHARGED TO BUYER AND PAID BY BUYER TO ESCROW HOLDER WITH FUNDS OTHER THAN THE DEPOSIT AND INTEREST ACCRUED THEREON, AND (C) THE DEPOSIT RELEASED TO SELLER PURSUANT TO SECTION 3.1 SHALL BE RETAINED BY SELLER AS LIQUIDATED DAMAGES PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671 AND 1677.

SELLER AND BUYER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS SECTION 10 OF THIS AGREEMENT AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

SELLER'S INITIALS

BUYER'S INITIALS

11. Legal Fees. In the event of the bringing of any action or suit by either party hereto against the other party hereunder to enforce or interpret any of the provisions, covenants or conditions of this Agreement, or arising out of any tortuous conduct by either party incident to this Agreement, the prevailing party in such action or suit shall be entitled to recover all costs and expenses of suit, including reasonable attorneys' fees.



12. Notices. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing (including telex, telecopy and telegraphic communications) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, telecommunicated with electronic confirmation or mailed by United States mail (postage prepaid), registered or certified, return receipt requested, addressed as follows:

To Seller: Community Redevelopment Agency of the City of Calexico  
Attn: Executive Director  
608 Heber Avenue  
Calexico, CA 92231  
Telephone No.: (760) 768-2110  
Telecopier No.: (760) 768-2103

With a Copy to: McDougal, Love, Eckis, Smith, Boehmer and Foley  
Attn: Jennifer M. Lyon  
460 North Magnolia  
El Cajon, CA 92020  
Telephone No.: (619) 440-4444  
Telecopier No.: (619) 440-4907

To Buyer: Minerva Kelada, M.D.

Telephone No.: (760)  
Telecopier No.: (760)

With a Copy to:

If to Escrow Agent: Chicago Title Insurance Company  
1196 Main St  
Attn:  
El Centro, CA 92243  
Telephone No.: (760) 352-2011

Each notice shall be deemed delivered (1) on the date delivered if by personal delivery, (2) on the date of transmission with electronic confirmation if by telecopier (so long as such transmission is received before 5:00 p.m. local time on a business day; otherwise delivery shall be deemed to have occurred on the next business day), (3) on the date shown on the return receipt as the date of delivery or first attempted delivery and refused in the United States mail (postage prepaid) by registered or certified mail. By giving to the other parties at least fifteen

(15) days written notice, the parties to this Agreement and their respective successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses and each shall have the right to specify as its address any other address within the State of California.

13. Representations and Warranties of Seller. Seller hereby represents and warrants to, and covenants with, Buyer as follows:

Except as expressly provided in this section, the parties acknowledge that Seller does not hereby make and has not made any warranties or representations, expressed or implied as to the Property's (including the improvements) legal, physical and/or financial condition now or in the future. Buyer hereby acknowledges that no such representations have been made except as specifically provided below.

Buyer acknowledges and agrees that the Property, which includes all improvements thereon, is to be purchased, conveyed and accepted by Buyer in its present condition, "AS IS" and that no patent or latent physical condition of the Property, whether or not known or discovered, shall affect the rights of either party hereto, except for latent defects unknown to Buyer, but with respect to which Seller had actual knowledge prior to the close of this transaction. Buyer has investigated and has knowledge of operative or imposed governmental laws and regulations (including specifically the regulations of the Environmental Protection Agency, other state and federal agencies having jurisdiction with respect to toxic wastes and hazardous substances, and land use laws and regulations) to which the Property may be subject, and is acquiring the Property on the basis of its review and determination of the applicability and effect of such laws and regulations. Buyer has neither received nor relied upon any representations concerning such laws and regulations made by Seller, Seller's employees, agents, or any other person acting for or on behalf of Seller.

Seller hereby represents and warrants to and covenants with, Buyer as follows:

13.1 Title. Seller shall deliver good and marketable title free and clear of any and all interests, encumbrances, liens, easements, rights of possession or other clouds of title, other than liens, encumbrances, clouds or conditions as may be approved in writing by Buyer, to the Property to Buyer at the Close of Escrow. The Heffernan lease in a holdover status as specified in Section 7.9 shall remain and Seller has no obligation to terminate such lease or remove Heffernan from the property prior to Close of Escrow. Seller shall have no liability hereunder for any title matter which is an insured loss under the Title Policy.

13.2 Encroachment. To the best of Seller's knowledge, there are no encroachments onto the Property of any improvements located on any adjoining property.

13.3 Governmental Notices. Seller has not received any notification from any governmental authority imposing any special assessments on the Property or bringing any condemnation actions against the Property, or any part thereof, nor to the best of Seller's knowledge are there any special assessments or condemnation actions being contemplated.

13.4 Undisclosed Defects. To the best of Seller's knowledge, there are no defects or conditions of the Property or soil which exist that have not been disclosed in writing by Seller, which may adversely affect the development or sale of the Property contemplated in this Agreement, or the costs thereof.

13.5 Violations. To the best of Seller's knowledge, neither Seller nor the Property is in violation of any applicable law or regulation and all covenants, conditions, restrictions, easements and similar matters affecting the Property have been complied with. Seller has disclosed that the current use on the Property is a legal non-conforming use under the Calexico Municipal Code and any changes to the use could trigger a zone change or the loss of the legal non-conforming use status.

13.6 Seller's Authority. Seller has the right, power, legal capacity and authority to enter into and comply with the terms of this Agreement, and the individuals executing this Agreement on behalf of Seller have the actual right and authority to bind Seller and to perform Seller's obligations under this Agreement, and no other person or entity is required to execute this Agreement to convey all of the Property to Buyer.

13.7 No Litigation. To the best of Seller's knowledge, there is no litigation or legal proceeding pending or threatened in writing against Seller or the Property that could reasonably be expected to materially and adversely affect Seller's or Buyer's ability to perform their respective obligations hereunder, or Buyer's proposed development of the Property.

13.8 No Toxic Wastes. To the best of Seller's knowledge, the Property has not been used for the storage or disposal of any toxic or hazardous waste, material or substance, (including but not limited to petroleum, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel or mixtures of natural gas and such synthetic gas or waste associated with the exploration, development or production of crude oil, natural gas, or geothermal resources), and Seller has received no notice from any governmental authority concerning the removal of any toxic or hazardous waste, material or substance from the Property, or concerning any restrictions on the use or development of the Property on account of the presence of any toxic or hazardous waste, material or substance on the Property or on any other real property in the vicinity of the Property. If Buyer desires to purchase a Phase 1 environmental report at Buyer's own cost, Buyer can do so; however Seller has not and does not intend to obtain one.

13.9 Income Tax Information. Seller is not a foreign person and is a "United States Person" as such term is defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the "Code"). Seller shall deliver to Buyer on or prior to the Close of Escrow an affidavit of Seller (or an authorized officer of the Seller), sworn to under penalty of perjury (i) setting forth the Seller's United States tax identification number, and stating that the Seller is not a foreign person and is a United States Person as defined in the Code; and (ii) indicating that Seller is a resident of California for purposes of Section 18805, 18815 and 26131 of the Act or is otherwise exempt from the withholding provisions of the Act.

13.10 Good Faith Disclosures. The parties intend by the representations and warranties to facilitate Buyer's due diligence review of the Property and to provide disclosure, in

good faith, of those matters addressed in this section, which might affect Buyer's development of the Property. The parties hereby agree to a mutual duty of good faith and fair dealing with respect to the disclosures set forth in this section.

13.11 Cooperation. Seller shall cooperate with Buyer in facilitating any and all communications with consultants and/or governmental agencies pertaining to the Property. Seller further agrees that Buyer shall have the right to contact any and all of Seller's consultants or governmental agencies who have performed, are performing, or will perform work to any degree or extent on the Property.

13.12 Accuracy of Information. To the best of Seller's knowledge, and without warranty of the accuracy of those prepared by third parties, all plans, information and documents heretofore or hereafter submitted to Buyer by Seller are or will be true, complete and accurate. The Seller is not aware of any omission to supply Buyer with any material information with respect to the Property, its history, prospects or operations, or any information which may be required to prevent the information already supplied from being misleading.

Seller hereby agrees to indemnify, defend and hold Buyer and the Property harmless from and against all claims, suits, judgments, losses, damages or liabilities of any nature (including costs and reasonable attorneys' fees) arising from or in connection with any breach of the foregoing representations and warranties and any other representations and warranties of Seller contained in this Agreement. Each of the foregoing representations and warranties shall be true and correct on and as of the Close of Escrow as though made at that time without the necessity of a separate written certificate regarding same. If after the date of this Agreement, but prior to the Closing of Escrow, Seller learns of facts which make any of the foregoing representations or warranties materially inaccurate, Seller shall notify Buyer of such facts within forty-eight (48) hours of learning of the same, and Buyer shall elect within three (3) business days to either terminate this Agreement by giving written notice to Seller and Escrow Holder within that period or acquire the Property on the terms set forth in this Agreement. Should Buyer terminate this Agreement pursuant to this section, any amounts paid by Buyer to Seller or deposited into Escrow by Buyer shall be returned to Buyer, and the parties shall each pay one-half (1/2) of any Escrow cancellation costs.

14. Possession, Risk of Loss. Buyer is already in possession of the Property due to the Existing Lease and should have insurance in place. However, full possession shall be given to Buyer upon Close of Escrow. All risk of loss or damage with respect to the Property shall pass from Seller to Buyer at the Close of Escrow.

15. Covenants and Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns. It is expressly understood between the parties that Buyer agrees that the Property shall be used and developed according to Section 32 of this Agreement. This use and development requirement and all other provisions of this Agreement shall be binding upon any of Buyer's heirs, personal representatives, successors and assigns. Buyer shall be solely responsible to provide notice to any of Buyer's heirs, personal representatives, successors and assigns of this provision and the requirements for use and development under this

Agreement and any subsequent agreement entered into between Seller and Buyer. Buyer shall indemnify and hold harmless the Seller for any damages or legal action that arises pursuant to the enforcement of this Agreement. Section 32 and the conditions of this Agreement will be a covenant running with the land. The Covenant and Memorandum of Agreement attached hereto as Exhibit "F" will be recorded to run with the applicable land upon Close of Escrow.

16. Survival. All representations and warranties and indemnities set forth in this Agreement shall survive for one (1) year from the Close of Escrow and delivery of title to the Property to Buyer and shall not be deemed to merge in the Grant Deed.

17. Required Actions of Buyer and Seller. Buyer and Seller agree to execute all such instruments and documents consistent herewith and to take all actions as may be required consistent herewith in order to consummate the purchase and sale herein contemplated and shall use their best efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

18. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and no addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing, signed by both Seller and Buyer.

19. Time of Essence. Time is of the essence of each and every term, condition, obligation and provision hereof.

20. General Provisions. The General Provisions of Escrow Holder attached hereto as Exhibit "D" are incorporated herein by this reference. To the extent that said General Provisions conflict with any provision of this Agreement, this Agreement shall prevail.

21. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

22. Real Estate Commissions. There are no real estate commissions to be paid regarding this transaction. Each party warrants to the other that the warranting party has incurred no obligation for a real estate broker's or salesman's commission by reason of this Agreement or the transaction contemplated hereby. Each party agrees to indemnify, hold harmless and defend the other from and against all liability, costs, damages and expenses from any such claims.

23. Severability. In the event any portion of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal, or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been part of this Agreement.

24. Headings. Headings at the beginning of each section and subsection are solely for the convenience of the parties and are not a part of this Agreement.

25. Construction. Whenever the context of this Agreement requires the same, the singular shall include the plural and the masculine shall include the feminine. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to sections and subsections are to this Agreement. All exhibits referred to in this Agreement are attached hereto and incorporated herein by reference. In the event the day on which Buyer or Seller is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day. There are no intended or incidental third-party beneficiaries to this Agreement and no person or entity not a party hereto shall have any rights under this Agreement.

26. Mutual Execution. Notwithstanding the delivery by Buyer to Seller of an unsigned draft of this Agreement for purposes of review and discussion, this Agreement shall have no force or effect until executed by both Buyer and Seller.

27. No Third Party Beneficiaries. There are no third party beneficiaries to the rights or obligations set forth in this Agreement, intended or incidental. The rights and obligations herein may only be enforced by the express parties hereto.

28. No Partnership or Joint Venture. This Agreement shall not be construed as creating a partnership or joint venture between Seller and Buyer or cause either of them to be responsible in any manner for the other's or any third party's debts or obligations.

29. Authority. Buyer and Seller shall each provide the other and Escrow Holder with appropriate resolutions, certificates of incumbency, articles of incorporation, certificates of good standing, and any and all authorizations reasonably acceptable to the other or necessary to meet Escrow Holder's requirements to complete the transaction contemplated herein.

30. Natural Hazard Disclosure Statement. Three (3) business days prior to the Close of Escrow, Seller shall provide Buyer with a Natural Hazard Disclosure Statement ("Natural Hazard Disclosure Statement") pursuant to the Natural Hazard Disclosure Act, California Government Code Sections 8589.3, 8589.4, and 51183.5, and California Public Resources Code Sections 2621.9, 2694, and 4136, and any successor statutes or laws. Buyer acknowledges and agrees that nothing contained in the Natural Hazard Disclosure Statement shall release Buyer from its obligation to fully investigate the condition of the Property, including, without limitation, whether the Property is located in any natural hazard areas and that Buyer has the expertise to perform such investigations and has agreed to do so under the terms of this Agreement. Buyer further acknowledges and agrees that the matters set forth in the Natural Hazard Disclosure Statement may change on or prior to the Close of Escrow and that Seller has no obligation to update, modify, or supplement the Natural Hazard Disclosure Statement. The provision of the Natural Hazard Disclosure Statement to Buyer shall not be deemed to be construed to limit the scope or effect of the provisions contained in Section 13 above. Buyer shall be solely responsible for preparing and delivering its own Natural Hazard Disclosure Statement to subsequent prospective purchasers of the Property.

31. Assignment. Buyer may not assign this Agreement or its rights hereunder without the prior written consent of Seller, which consent Seller shall not unreasonably withhold.

32. Redevelopment Restrictions.

32.1 Use Restriction/Future Development. Buyer understands that Seller is a redevelopment agency and that the Property shall not be used for mere speculation. Buyer and Seller agree that this Agreement sets forth continuing obligations which will be performed or adhered to after the Close of Escrow by Buyer or Buyer's successors. Buyer agrees to maintain and use the Property as a medical office building in good repair for 10 (ten) years and then to redevelop the Property (and improvements thereon) for another use within the next ten (10) years (or sooner) to help eliminate blight. If Buyer decides to sell the property, Buyer agrees to provide the Community Redevelopment Agency of the City of Calexico the first right of refusal to purchase the property back at fair market value as determined by an appraiser hired by the Redevelopment Agency. When Buyer decides to remodel or reconstruct the improvements on the Property in the future, Buyer acknowledges that she must comply with all applicable development, zoning, and environmental regulations as contained in the Calexico Municipal Code, other City regulations, and state law.

32.2 Restrictive Covenants. Buyer shall not restrict the rental, sale, or lease of the Property on any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code.

33. Purchase Price. The Purchase Price has been determined based upon an appraisal obtained by Seller and was agreed upon based on arm's-length negotiations.

34. Jurisdiction and Venue. This Agreement shall be construed under the laws of the State of California in effect at the time of the signing of this Agreement. The parties consent to the jurisdiction of the California courts with venue in Imperial County.

35. No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

36. Offer. Any delivery of unsigned copies of this Agreement is solely for the purpose of review by the party to whom it is delivered, and neither the delivery nor any prior communications between the parties, whether oral or written, shall in any way be construed as an offer by Seller, nor in any way imply that Seller is under any obligation to enter the transaction which is the subject of this Agreement. The signing of this Agreement by Buyer constitutes an offer which shall not be deemed accepted by Seller unless and until Seller has proper authority to enter into and has signed this Agreement. Buyer agrees that this offer shall be acceptable and cannot be revoked for a period of thirty (30) days. This is not a binding agreement unless and until executed on behalf of Agency by its Executive Director or his designee after adoption of a resolution or minute action by the Seller. Further, the transfer of land by Seller must be approved by the Planning Commission and City Council prior to final execution of Seller of this Agreement.

37. Legal Advice. Each party represents and warrants to the other the following: they

have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Minerva Kelada,  
An individual

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

"Buyer"

Community Redevelopment Agency of the City of Calexico

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

"Seller"

DRAFT



CONSENT OF ESCROW AGENT

The undersigned Escrow Agent hereby agrees to (i) accept the foregoing Purchase Agreement and Escrow Instructions, (ii) be Escrow Agent under said Agreement and Escrow Instructions, and (iii) be bound by said Agreement and Escrow Instructions in the performance of its duties as Escrow Agent; provided, however, the undersigned shall have no obligations, liability or responsibility under (i) this Consent or otherwise, unless and until said Agreement and Escrow Instructions, fully signed by the parties, has been delivered to the undersigned, or (ii) any amendment to said Agreement and Escrow Instructions unless and until the same shall be furnished to the undersigned in writing.

CHICAGO TITLE INSURANCE  
COMPANY

Dated: \_\_\_\_\_, 2008

By: \_\_\_\_\_

DRAFT

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

DRAFT

EXHIBIT "B"

DUE DILIGENCE DOCUMENTATION

Seller shall deliver to Buyer the following documentation pertaining to the Property, if in possession of Seller:

- Plans and/or Maps.
- Geotechnical Records.
- Field Inspection Records.
- Easement Documents.
- Regulatory Requirements.
- Historical Files / Materials.
- Any and all other pertinent files or documents pertaining to the Property.

DRAFT

EXHIBIT "C"  
GRANT DEED  
{Attached Hereto}

DRAFT

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

MINERVA KELADA, M.D.

\_\_\_\_\_, California 92\_\_\_\_

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

GRANT DEED

In accordance with Section 11932 of the California Revenue and Taxation Code, Grantor has declared the amount of transfer tax which is due by a separate statement which is not being recorded with this Grant Deed.

FOR A VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO, ("Grantor") hereby grants to MINERVA KELADA, M.D. ("Grantee"), an individual, the improvements and real property in the City of Calexico, County of Imperial, State of California, described in Exhibit "1" attached hereto and made a part hereof.

The Grantee herein covenants by and for herself, her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

Dated: \_\_\_\_\_, 20\_\_\_\_

Grantor: COMMUNITY REDEVELOPMENT AGENCY  
OF THE CITY OF CALEXICO

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Grantee: MINERVA KELADA

EXHIBIT "C"

Page 2 of 5

**EXHIBIT "1"**

**LEGAL DESCRIPTION OF PROPERTY**  
**PARCEL**

**DRAFT**

ACKNOWLEDGMENT

State of California

County of \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_  
(insert name and title of the officer)

\_\_\_\_\_, personally appeared \_\_\_\_\_

\_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the  
person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)  
acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

DRAFT

EXHIBIT "C"

Page 4 of 5

Document No. \_\_\_\_\_  
Date Recorded \_\_\_\_\_

STATEMENT OF TAX DUE AND REQUEST THAT TAX DECLARATION  
NOT BE MADE A PART OF THE PERMANENT RECORD  
IN THE OFFICE OF THE COUNTY RECORDER  
(Pursuant to Section 11932 R&T Code)

To: Registrar-Recorder  
County of Imperial

Request is hereby made in accordance with the provisions of the Documentary Transfer Tax Act  
that the amount of tax due not be shown on the original document which names:

COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO  
(as Grantor)

And

MINERVA KELADA  
(as Grantee)

Property described in the accompanying document is located in the City of Calexico, County of  
Imperial, State of California.

The amount of tax due on the accompanying document is \$ \_\_\_\_\_.

\_\_\_\_\_ Computed on full value of property conveyed, or

\_\_\_\_\_ Computed on full value less liens and encumbrances remaining at time of sale.

\_\_\_\_\_  
Signature of Declarant or Agent

\_\_\_\_\_  
Firm Name

EXHIBIT "C"

Page 5 of 5



**EXHIBIT "D"**

**ESCROW HOLDER'S GENERAL PROVISIONS AND ACKNOWLEDGMENT**  
**{Attached Hereto}**

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**EXHIBIT "E"**  
**SURRENDER OF LEASHOLD AGREEMENT**

**DRAFT**

**EXHIBIT "F"**  
**COVENANT AND MEMORANDUM OF AGREEMENT**

**DRAFT**

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**AGREEMENT OF PURCHASE AND SALE  
AND JOINT ESCROW INSTRUCTIONS  
FOR THE PURCHASE AND SALE OF REAL PROPERTY  
IN THE CITY OF CALEXICO**

**BY AND BETWEEN**

**COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO,**

**SELLER**

**AND**

**MINERVA KELADA, BUYER**

**OCTOBER \_\_, 2008**

**DRAFT**

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## **LIST OF EXHIBITS**

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EXHIBIT "B" DUE DILIGENCE DOCUMENTATION

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EXHIBIT "D" ESCROW HOLDER'S GENERAL PROVISIONS AND ACKNOWLEDGMENT

EXHIBIT "E" SURRENDER OF LEASEHOLD AGREEMENT

EXHIBIT "F" COVENANT AND MEMORANDUM OF AGREEMENT

**DRAFT**



**RESOLUTION NO. 2008-\_\_\_\_\_**

**A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE  
CITY OF CALEXICO, CALIFORNIA, APPROVING THE SALE OF AGENCY  
PROPERTY TO MINERVA KELADA.**

**WHEREAS**, Health and Safety Code section 33430 allows the Community Redevelopment Agency to dispose of real property in any way it chooses as long as the Agency holds a duly noticed public hearing; and

**WHEREAS**, the Agency held a public hearing and considered any public testimony on October 7, 2008 regarding the land transfer agreement between the Agency and Minerva Kelada for the sale of certain land more particularly described as 450 Birch Avenue (APNs 058-281-002 and 058-281-003) and as detailed in the subject Land Transfer Agreement; and

**WHEREAS**, the public hearing was properly advertised in the Imperial Valley Press twice in the two weeks prior to the hearing; and

**WHEREAS**, the Land Transfer Agreement is beneficial to the Agency because the purchase price is at the appraised value and because the Agreement requires medical services to be provided at the location for the next ten (10) years and for redevelopment of the property to occur in the next twenty (20) years, or sooner; and

**WHEREAS**, the Land Transfer Agreement contains the applicable Health and Safety Code Sections 33430 *et. seq.* requirements for the transfer of Agency property; and

**WHEREAS**, the Agency Board now wishes to approve the Land Transfer Agreement with Minerva Kelada.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMUNITY  
REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO AS FOLLOWS:**

**SECTION 1.** The Board finds that the above-listed recitals are true and correct.

**SECTION 2.** The Agency Board hereby approves the Land Transfer Agreement between the Agency and Minerva Kelada because it is in the best interests of the Agency and the community.

**SECTION 3.** The Agency further directs staff to take all necessary steps to implement the Land Transfer Agreement and authorizes the Executive Director to execute the Agreement, the deed and all other documents associated with the land transaction.

**PASSED, ADOPTED, AND APPROVED** by the Community Redevelopment Agency of the City of Calexico at the regular meeting this 7th day of October, 2008.

\_\_\_\_\_  
LOUIS FUENTES, Chairman

ATTEST:

\_\_\_\_\_  
RALPH VELEZ, Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
JENNIFER M. LYON, Agency Counsel

STATE OF CALIFORNIA    )  
CITY OF CALEXICO        )       ss.  
COUNTY OF IMPERIAL    )

I, Ralph Velez, hereby certify that I am the duly appointed Secretary of the Community Redevelopment Agency of the City of Calexico and that the foregoing Resolution No. \_\_\_\_\_, was duly adopted at a regular meeting of the Board of Directors thereof held on the 7<sup>th</sup> day of October 2008.

\_\_\_\_\_  
Ralph Velez, Agency Secretary